

UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA
ROOM 211
FEDERAL BUILDING AND U.S. POST OFFICE
225 SOUTH PIERRE STREET
PIERRE, SOUTH DAKOTA 57501-2463

IRVIN N. HOYT
BANKRUPTCY JUDGE

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August 16, 2004

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Subject: *Wells Fargo Bank South Dakota, N.A. v. Troy E.
and Renee J. Grabowska (In re Grabowska)*, Adv.
03-1063;
Chapter 7; Bankr. No. 03-10318

Dear Counsel:

The issue before the Court is whether Defendant-Debtor Renee J. Grabowska is entitled to a jury trial. This is a core proceeding under 28 U.S.C. § 157(b)(2). This letter decision and accompanying order shall constitute the Court's findings and conclusions under Fed.R.Bankr.P. 7052. As set forth below, Defendant-Debtor Renee Grabowska is not entitled to a jury trial.

Summary. Troy E. and Renee J. Grabowska ("Debtors") filed a Chapter 7 petition in bankruptcy on August 29, 2003. On December 2, 2003, Wells Fargo Bank South Dakota (Bank) timely filed a nondischargeability complaint against them. The Bank sought a determination that its claim of \$531,855.13 (plus interest and costs) against Debtors was nondischargeable on several fraud-related grounds. Debtor Troy Grabowska consented to a nondischargeable judgment against himself for the full

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amount. Debtor Renee Grabowska answered and generally denied any wrongdoing on her part. She requested a jury trial.¹

The Bank filed a proof of claim on May 24, 2004, for an unsecured claim of \$531,855.13. No one has yet filed an objection to the claim.

After the completion of discovery, the Court requested short briefs from the parties on the issue of whether Debtor Renee Grabowska was entitled to a jury trial. In its brief, the Bank stated it had no objection, in this case only, to the Court relying on *Quarles v. Wells Fargo Bank Home Mortgage, Inc. (In re Quarles)*, 294 B.R. 729 (Bankr. E.D. Ark. 2003), where the court concluded that the debtor was not entitled to a jury trial on a stay violation issue but was entitled to a jury trial on issues related to conversion and damages to her personal property. The Bank, however, also noted that several other courts, whose decisions are cited in *Quarles*, have concluded that a debtor who has filed a voluntary petition has consented to the Bankruptcy Court's equitable jurisdiction for all issues.

In her brief, Debtor Renee Grabowska relied fully on *Quarles* and that court's conclusion that a debtor who voluntarily files a petition in bankruptcy only waives his or her right to a jury trial on disputes that are vital to the bankruptcy process and the adjustment of the debtor-creditor relationship, but does not waive that right on issues that are only incidentally related to the bankruptcy process. *Quarles*, 294 B.R. at 730-31. Therefore, while Debtor Renee Grabowska conceded that she did

¹ Before the Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, a bankruptcy judge in this Circuit did not have statutory authority to preside over a jury trial. *In re United Missouri Bank of Kansas City, N.A.*, 901 F.2d 1449 (8th Cir. 1990)(cited in *In re Mathews*, 203 B.R. 152, 159-60 (Bankr. D. Minn. 1996)). Following the 1994 Act, Congress said bankruptcy judges may conduct a jury trial if there has been a specific designation by the District Court and if both parties consent. 28 U.S.C. § 157(e). The United States District Court for the District of South Dakota designated the United States Bankruptcy Court for the District of South Dakota to conduct jury trials by Standing Order entered December 19, 1994.

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not have a right to a jury trial on the nondischargeability issue, she argued that she was entitled to have a jury decide the amount of any debt declared nondischargeable, especially since the Bank had alleged fraud and conversion of collateral.

Discussion. Though the Court of Appeals for this Circuit has not ruled on the issue,² the majority of courts agree that a debtor does not have a right to a jury trial on whether a particular claim is nondischargeable. See, e.g., *In American Express Travel Related Services Co. v. Hashemi (In re Hashemi)*, 104 F.3d 1122, 1124-25 (9th Cir. 1996)(quoting *Benedor Corp. v. Conejo Enterprises, Inc. (In re Conejo Enterprises, Inc.)*, 96 F.3d 346, 354, n.6 (9th Cir. 1996))(the debtor was not entitled to a jury trial on the nondischargeability issues because it was "vital to the bankruptcy process of allowance and disallowance of ... claims."); *In re Maurice*, 21 F.3d 767, 773 (7th Cir. 1994)(the debtor did not have a right to a jury trial on the nondischargeability issue, but could demand that a jury determine the amount of the claim, which allegedly arose from fraud and conversion); and *N.I.S. Corp. v. Hallahan (In re Hallahan)*, 936 F.2d 1496, 1502-08 (7th Cir. 1991)(the debtor did not have a right to a jury trial in a nondischargeability action against him, for neither the determination of dischargeability nor the amount of the claim, which was arose from a contract, not a tort). This Court agrees with these holdings and concludes that Debtor Renee Grabowska is not entitled to a jury trial on whether the Bank's claim against her is nondischargeable. That leaves the issue of whether she is entitled to have a jury decide the amount of her claim.

² In a cause of action under 11 U.S.C. § 363(n) [damages arising from a collusive sale of estate property], the court applied the general tests for a right to a jury trial. *Landscape Properties, Inc. v. Vogel*, 46 F.3d 1416, 1424 (8th Cir. 1995)(discussing *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989)). If the claim at issue is inherently legal rather than equitable and if it involves what are traditionally viewed as private rather than public rights, then the litigant is entitled to a jury trial. *Id.*

In *Hallahan*, 936 F.2d at 1502-08, the court alternatively concluded that a debtor who files a voluntary petition in bankruptcy and is a defendant in an adversary proceeding waives his or her right to a jury trial. *Id.* at 1505-06. Though the court's broad conclusion has been criticized, it makes sense. If a creditor, by filing a proof of claim, subjects himself to the bankruptcy court's equitable jurisdiction and can no longer demand a jury trial on issues regarding the restructuring of the debtor-creditors relationship, *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 57-58 (1989), then it logically follows that a debtor does no less by voluntarily filing a petition in bankruptcy. *SNA Nut Co. v. Haagen-Dazs Co. (In re SNA Nut Co.)*, 302 F.3d 725, 730; *Hallahan*, 936 F.2d at 1505-06; and *Hutchins v. Fordyce Bank and Trust Co. (In re Hutchins)*, 211 B.R. 322, 324-25 (Bankr. E.D. Ark. 1997)(several cites therein).

This, however, is not the adversary proceeding well-suited to resolving when, if ever, a debtor is entitled to have a jury determine the amount of a nondischargeable claim. Debtors' bankruptcy estate, which is not a party to this adversary proceeding, also has an interest in the amount of the Bank's claim since the estate trustee has found assets to distribute. The Bank has filed a proof of claim. If any party in interest has evidence that the Bank's proof of claim is inaccurate, the better course, where both Debtor³ and the estate have an interest in the amount of the Bank's claim, is for that party to file an objection to the Bank's claim. The resulting contested matter

³ Though a Chapter 7 debtor generally does not have standing to object to a proof of claim, *White v. Coors Distributing Co. (In re White)*, 260 B.R. 870, 875 (B.A.P. 8th Cir. 2001)(cites therein), that rule will not apply here. If the Court determines in this adversary proceeding that the Bank's claim against Debtor Renee Grabowska is nondischargeable, Debtor Renee Grabowska will have a pecuniary interest in the distribution of estate assets. It is highly unlikely that estate assets will be sufficient to pay the Bank's claim in full, and the unpaid balance would be her nondischargeable obligation. 4 Lawrence P. King, *COLLIER ON BANKRUPTCY*, para. 502-02[2][c] (15th rev. ed. 2003).

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is a core proceeding⁴ for which neither the claim holder nor the objector may demand a jury trial. *Billing v. Ravin, Greenberg & Zackin, P.A.*, 22 F.3d 1242, 1247-49 (3rd Cir. 1994)(discussing relevant Supreme Court opinions).

An order denying Defendant-Debtor Renee Grabowska's request for a jury trial will be entered. A final pre-trial conference will be held so that a trial date may be set to resolve whether the Bank's claim against Debtor Renee Grabowska is nondischargeable. If Debtor Renee Grabowska also wants to object to the Bank's proof of claim, she should file that objection promptly. If appropriate, an evidentiary hearing on the amount of the Bank's claim and a bench trial on the nondischargeability issue in this adversary proceeding can be held jointly.

Sincerely,

/s/ Irvin N. Hoyt

Irvin N. Hoyt
Bankruptcy Judge

INH:sh

CC: adversary file (docket original; serve parties in interest and Trustee William J. Pfeiffer)

⁴ That a proceeding is denominated core does not alone determine that a party has no right to a jury trial. *Brown v. Shepherd (In re Lorax Corp.)*, 307 B.R. 560, 563-64 and 564 n.9 (Bankr. N.D. Tex 2004) (cites therein).